

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK P. MURPHY,

Plaintiff,

-against-

L.A. SPAULDING, *et al.*,

Defendants.

20-CV-10856 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, currently incarcerated at the Westchester County Jail, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights on September 23, 2020. By order dated December 28, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). For the following reasons, the complaint is dismissed without prejudice.

After granting Plaintiff leave to proceed IFP, the Court discovered that Plaintiff previously submitted a substantially similar complaint against Defendants alleging that they failed to protect him from another detainee. That case is pending before the Honorable Louis L. Stanton of this Court under docket number 20-CV-9013 (LLS). Because this complaint raises the same claims, no useful purpose would be served by the filing and litigation of this duplicate lawsuit. Therefore, this complaint is dismissed without prejudice to Plaintiff's pending case under docket number 20-CV-9013 (LLS).

In light of the Court's belief that Plaintiff may have submitted this duplicate complaint in error, the Clerk of Court shall not charge Plaintiff the \$350.00 filing fee for this action, and the Warden or Superintendent having custody of Plaintiff shall not deduct or encumber funds from Plaintiff's prison trust account for this lawsuit.

The Clerk of Court is directed to mail a copy of this order to Plaintiff and to the Warden or Superintendent having custody of Plaintiff and note service on the docket. Plaintiff's complaint is dismissed without prejudice.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: January 4, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge